

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,751

IN THE MATTER OF:

Served July 21, 2015

3MH SERVICES LTD., Suspension and)
Investigation of Revocation of)
Certificate No. 2065)

Case No. MP-2015-020

This matter is before the Commission on respondent's response to Order No. 15,603, served May 18, 2015.

I. BACKGROUND

Certificate No. 2065 was automatically suspended on January 16, 2015, pursuant to Regulation No. 58-12, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 15,329, served January 16, 2015, noted the automatic suspension of Certificate No. 2065, directed respondent to cease transporting passengers for hire under Certificate No. 2065, and gave respondent 30 days to replace the terminated endorsement and pay the \$100 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 2065.

Respondent paid the late fee, and submitted a \$1.5 million WMATC Insurance Endorsement, and the suspension was lifted in Order No. 15,379, served February 5, 2015, but because the effective date of the new endorsement is January 22, 2015, instead of January 16, 2015, the order gave respondent 30 days to verify cessation of operations as of January 16, 2015, as corroborated by copies of respondent's pertinent business records, in accordance with Regulation No. 58-14(a). Respondent did not respond.

Order No. 15,603, served May 18, 2015, directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 2065, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed.

II. RESPONSE TO ORDER NO. 15,603 AND FINDINGS

In response to Order No. 15,603, respondent has submitted a statement from its manager, Montasir Gamblan, and produced copies of two checking account statements - one for December 2014 and one for January 2015. Respondent has produced no other statements and no other business records.

We find that Mr. Gamblan's lone statement and respondent's meager document production do not fully address the Commission's concerns.

First, the statement indicates that Mr. Gamblan was out of the country from January 13, 2015, to February 25, 2015. But the date stamps appearing on the copies of pages from Mr. Gamblan's passport, volunteered by Mr. Gamblan in support of his statement, only support a finding that he was outside the United States from January 24, 2015, to February 1, 2015.

Second, the statement indicates that Mr. Gamblan otherwise did not personally conduct any business under WMATC Certificate No. 2065 from December 1, 2014, until January 31, 2015, but Mr. Gamblan is not the certificate holder. The certificate holder is 3MH Services, Ltd. Mr. Gamblan's disavowal of personal involvement in respondent's business affairs during the suspension period does not rule out the possibility that respondent conducted operations during the suspension period through the efforts of someone else. Indeed, respondent's 2015 annual fee was paid on January 15, 2015, by credit card belonging to someone other than Mr. Gamblan, and Mr. Gamblan is not the only person authorized by respondent's insurance company to operate respondent's vehicle. And if Mr. Gamblan did not sign the insurance application on January 22, 2015, that resulted in a change of insurers from Northland Insurance Company to Global Liberty Insurance Company of New York, then someone else must have.

Third, Order No. 15,379 directed respondent to produce copies of its business records from November 1, 2014, to February 5, 2015. Respondent's production of bank statements only, for two months only, obviously falls short of that requirement. And it is worth noting that the two bank statements are designated respondent's "MAIN ACCOUNT," which implies the existence of one or more other accounts maintained by respondent at the same bank.

Finally, although Mr. Gamblan contends that respondent's sole vehicle had a "major mechanical problem" during the suspension period, his assertion is not corroborated by documentary evidence, such as a written estimate from a repair facility, as required by Regulation No. 58-14(a) and Order No. 15,379.

III. ASSESSMENT OF FORFEITURE AND REVOCATION OF AUTHORITY

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.¹

The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.²

¹ Compact, tit. II, art. XIII, § 6(f).

² Compact, tit. II, art. XI, § 10(c).

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.³ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by intentional or careless disregard or plain indifference.⁴

Because respondent has failed to fully produce corroborating records as required by Regulation No. 58-14(a) and directed by Order No. 15,379, and because respondent has offered no explanation for this noncompliance, we find that respondent has failed to show cause why the Commission should not assess a civil forfeiture of \$250⁵ and revoke Certificate No. 2065.⁶

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Regulation No. 58-14(a) and Order No. 15,379.

2. That respondent is hereby directed to pay to the Commission within 30 days of the date of this order, by check or money order, the sum of two hundred fifty dollars (\$250).

3. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 2065 is hereby revoked for respondent's willful failure to comply with Regulation No. 58-14(a) and Order No. 15,379.

4. That within 30 days from the date of this order respondent shall:

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 2065 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND DORMSJO:



William S. Morrow, Jr.
Executive Director

³ *In re Car Plus Transp. LLC*, No. MP-14-099, Order No. 15,592 (May 15, 2015).

⁴ *Id.*

⁵ *See id.* (assessing \$250 for failing to produce documents).

⁶ *See id.* (revoking authority for failing to produce documents corroborating verification of suspension compliance).